ONG CHUAN HUAT SDN. BHD.

v.

MOHD. JAIS ABDULLAH

HIGH COURT MALAYA, PULAU PINANG
WAN ADNAN J
[CIVIL SUIT NO. 23-128-88]
2 NOVEMBER 1988

CIVIL PROCEDURE: *Injunction - Mareva injunction - Claim based on agreed balance due - Work done, materials supplied and money expended - Defendant attempting to dispose/ remove assets - Whether defendant can be injuncted - Essential requirements for a Mareva Injunction.*

This was an application to set aside the interim injunction granted against the defendant from disposing of his assets and leaving Malaysia. The plaintiff had filed a suit claiming from the defendant *inter alia* the sum of RM121,692.89 being the agreed balance due for work done, materials provided and money expended by the plaintiffs for the management of a fish farm for the defendant. There was a risk of the defendant disposing of assets which would frustrate the plaintiff's attempt to recover the fruits of a judgment he is likely to obtain against the defendant.

Held:

[1] in order for the Court to grant a Mareva Injunction the following essential requirements must be shown;

a) the plaintiff must show he has a good arguable case;

b) the plaintiff must produce evidence that the defendant has assets within jurisdiction;

c) there is a risk of the defendant's assets being removed from jurisdiction or disposed of within jurisdiction so as to render them unavailable or untraceable to satisfy the judgment of the plaintiff is likely to obtain.

[2] the plaintiff has shown all the three essential requirements. The defendant's application is dismissed with costs.

[Applications dismissed with costs.]

Case referred to:

Pacific Centre Sdn. Bhd. v. United Engineers (M) Bhd. [1984] 2 CLJ (Rep) 319

For the applicant/defendant - R. Rajasingam (R. Rajasingam & Co.)
For the respondent/plaintiffs - Abu Haniffa bin Mohamed Abdullah

JUDGMENT

Wan Adnan J:

In this action the plaintiffs' claim against the defendant is for the sum of RM121,692.89 being the agreed balance due from the defendant for work done, materials provided and money expended by the plaintiffs for the defendant in the construction, maintenance and management of a fish farm for the defendant. By the summons-in-chambers dated 20 June 1988 the plaintiffs applied for a Mareva injunction. The application was heard before *ex parte* on 21 June 1988 and I granted the order in terms of the application.

By the summons-in-chambers dated 26 July 1988 the defendant applied to set aside the order granted on 26 January 1988. This application was fixed for hearing on 27 August 1988 but by consent was adjourned to 8 September 1988. After hearing the parties I dismissed the application with costs.

The defendant now appeals.

The essential requirements for a Mareva injunction are:

(i) The plaintiff must show he has a good arguable case;

(ii) The plaintiff must produce evidence that the defendant has assets within jurisdiction.

(iii) There is a risk of the defendant's assets being removed from jurisdiction or disposed of within jurisdiction so as to render them unavailable or untraceable to satisfy the judgment the plaintiff is likely to obtain.

I shall first deal with the first ingredient namely, whether the plaintiffs have a good arguable case.

The plaintiffs' claim is based on the statement of accounts which according to the plaintiffs had been acknowledged by the defendant and/or his servants or agent. The statement of accounts had been signed by the defendant, his son and his employees at various times for work done, material provided and money expended by the plaintiffs. The statement of accounts was produced as Exhibit 'OCH1' attached to the affidavit of Ong Chuan Huat, the managing director and chairman of the plaintiff company. The statement of accounts was produced without being accompanied by the translation thereof. There were signatures on the statement and the last figure was RM121,692.89 being the amount of the claim.

By his affidavit affirmed on 12 September 1988 Seow Boon Kheang stated that in 1985/86 his company had delivered sand, bricks and red earth to the premises of the defendant at Ladang Pondok Upeh for the construction of fish ponds. Ong Chuan Huat in his Supplementary Affidavit affirmed on 6 September 1988 produced a few invoices for materials supplied in connection with the work undertaken by him for the defendant.

The defendant in his affidavit affirmed on 22 July 1988 denied owing the plaintiffs the amount claimed. He did not deny the authenticity of the statement of accounts but said the same related to the various other business transactions he had with Ong Chuan Huat and not with the plaintiffs. He did not deny having signed the statement of account. He did not deny the construction of the fish ponds but said that he instructed Ong Chuan Huat and not the plaintiffs. The defendant in effect had said that he had dealings with Ong Chuan Huat and not with the plaintiffs, Ong Chuan Huat Sdn. Bhd.

Ong Chuan Huat had affirmed that the fish ponds were built by the company. The various invoices were made in the name of the company.

Edgar Joseph Jr J in his judgment in the case of *Pacific Centre Sdn. Bhd. v. United Engineers (Malaysia) Bhd.* [1984] 2 CLJ (Rep) 319 quoted the judgment of Mustill J in the case of *Ninemia Maritime Corp. v. Trave Schiffehrfsgesselshaft mblf. Und. Co. Kg. (then unreported):*

> In my judgment, he (Lord Justice Kerr) was doing no more than reiterating that the plaintiff must always demonstrate a likelihood of success and was not prescribing the degree of likelihood. In these circumstances I consider that the right course is to adopt the test of a good arguable case in the sense of a case which is more than barely capable of serious argument and yet not necessarily one which the Judge believes to have a better than fifty per cent chance of success.

I agree with the test and applying the test I am satisfied that the plaintiffs have a good arguable case.

I need not deal with the second ingredient since it is not in issue.

For the third ingredient, I agree with Edgar Joseph Jr J when he stated in the *Pacific Centre's* case that the test was to be as follows:

> I prefer the view that it would be sufficient for the plaintiff to merely show a risk of disposal of assets which has the effect of frustrating the plaintiff in his attempt to recover the fruits of a judgment he is likely to obtain against the defendant ...

In this case the plaintiffs had produced the affidavits of Loo Kim Yeong and Sim Yam See both affirmed on 18 July 1988. Both had stated that the defendant had said that he intended to sell his properties and to move to Thailand.

The defendant in his affidavit denied that he ever intended to sell his properties and to leave Malaysia. Although he denied the truth of the affidavits the defendant did not consider it necessary to cross-examine the deponents on their affidavits. In my opinion there is sufficient evidence produced by the plaintiffs to show that there is a risk of the disposal of the defendant's assets.

For the above reasons I dismissed the defendant's application with costs.

Also found at [1988] 2 CLJ 805